

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

MIDAMERICAN ENERGY COMPANY,
BLACK HILLS/IOWA GAS UTILITY
COMPANY, LLC D/B/A BLACK HILLS
ENERGY, IOWA ASSOCIATION OF
ELECTRIC COOPERATIVES,
INTERSTATE POWER AND LIGHT CO.
and IOWA ASSOCIATION OF
MUNICIPAL UTILITIES,

Petitioners,

v.

IOWA UTILITIES BOARD, A DIVISION
OF THE DEPARTMENT OF COMMERCE

Respondent.

Case No.

PETITION FOR JUDICIAL REVIEW

MidAmerican Energy Company, Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy, Iowa Association of Electric Cooperatives, Interstate Power and Light Company, and Iowa Association of Municipal Utilities Petition for Judicial Review of the July 29, 2022 order of the Iowa Utilities Board (Docket SPU-2022-0003) requiring an assessment not permitted by Iowa Code. In support of this Petition, Petitioners state:

Introduction

1. The Iowa Utilities Board (“Board”) overbilled the utilities for a tax assessment beyond what is authorized by Iowa Code § 476.10A. Section 476.10A provides:

1. a. The board shall direct all gas and electric utilities to remit to the treasurer of state one-tenth of one percent of the total gross operating revenues during the last calendar year derived from

their intrastate public utility operations. The board shall by rule provide a schedule for remittances.

Although the Board did not promulgate rules as required by the Code, for decades the Board consistently implemented Iowa Code § 476.10A by sending one invoice in the first half of each state fiscal year that explicitly referenced the fiscal year of the invoice and the calendar year's revenue on which it was based. In 2017, the legislature moved the administrative location of the Iowa Energy Center and set a sunset date for the assessment of July 1, 2022. In 2018, the legislature explicitly set out allocations by fiscal year for the four remaining years. In 2019, the Board stopped referencing the fiscal year on the invoices presented.

Starting in 2021 and continuing into 2022, the Board deviated from its long-standing implementation of Section 476.10A. The Board's deviation from its prior practice harmed the Utilities, and correspondingly their customers, as it required an extra full-year's assessment not authorized by the Legislature. The Utilities timely objected to the May 2022 invoices issued by the Board, which comprised an unauthorized fifth full-year assessment in four fiscal years. The Board erred as a matter of law when it overruled the Utilities' Objection and demanded payment within ten days, a violation of its own administrative rules. The Utilities now seek judicial review and oversight of this excessive and unauthorized tax.

Jurisdiction

2. This Petition relates to a final order of the Iowa Utilities Board under Iowa Code § 17A.19 issued on July 29, 2022 in IUB Docket No. SPU-2022-0003. Order attached as Exhibit 1.

Venue and Parties

3. MidAmerican is an Iowa corporation with its principal place of business in Des Moines, Iowa.
4. Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy ("Black Hills Energy") is a Delaware limited liability company with its principal place of business in Grimes, Iowa. Black Hills Energy serves approximately 161,000 natural gas customers across 133 communities in Iowa.
5. Iowa Association of Electric Cooperatives ("IAEC") is a trade association established to support the interests of member-owned electric cooperatives. It is an Iowa Cooperative organized and existing under Iowa law, with a principal place of business in Polk County, Iowa. Its members include 39 distribution cooperatives and 9 generation and transmission cooperatives.
6. Interstate Power and Light Company ("IPL") is an Iowa corporation with its principal place of business in Cedar Rapids, Iowa. IPL serves nearly 500,000 electric and 250,000 gas customers in 83 Iowa counties. IPL's mission is to deliver energy solutions and exceptional service that our customers and communities count on - safely, efficiently and responsibly.

7. Iowa Association of Municipal Utilities ("IAMU") represents 754 municipal electric, gas, water, and broadband utilities in Iowa, collectively serving almost 2.2 million people. Formed in 1947, the IAMU is the largest organization of its kind in the United States, and provides legal, legislative, advocacy, and public policy services for its members. Among IAMU's members are 135 electric and 51 municipal gas utilities who are subject to the assessment of taxes pursuant to Iowa Code section 476.10A.
8. The Iowa Utilities Board ("IUB" or "Board") is an administrative agency of the State of Iowa, and part of the Iowa Department of Commerce. It is the agency charged with regulation of certain defined utilities in Iowa and is an Agency for purposes of the Iowa Administrative Procedures Act. *See* Iowa Code § 17.2(1). The Board's specific enabling statutes are found at Iowa Code chapters 474, 476, 476A, 477, 477A, 477C, 478, 479, 479A, and 479B.
9. Venue is proper in Polk County pursuant to Iowa Code § 17A.19(2), which establishes venue in Polk County by statute.

Facts

10. In 1990, the Iowa legislature established the Iowa Energy Center ("IEC") at Iowa State University ("ISU") to "strive to increase energy efficiency in all areas of Iowa energy use" and "serve as a model for state efforts to decrease dependence on imported fuel and decrease reliance on energy production from nonrenewable, resource-depleting fuels." Iowa Code § 266.39C. The IEC was funded through the assessment which required the utilities to pay "one-tenth of one percent of the total gross operating revenue during the last

calendar year derived from their intrastate public utility operations,” with the first assessment to be made no earlier than July 1, 1991. Iowa Code § 476.10A. As originally constructed, 85% of the total assessment would be appropriated to the IEC with the remaining 15% appropriated to the Center for Global and Regional Environmental Research (“CGRER”).

11. In 2017, the legislature moved authority over the IEC from ISU to the Iowa Economic Development Authority (“IEDA”). 2017 Acts Ch. 169, § 35. At the same time, the legislature imposed a sunset date of July 1, 2022 for utilities’ funding obligations under section 476.10A. *Id.* at §§ 34-38.

12. In 2018, the legislature amended section 476.10A to modify the appropriation of funds to the IEC. 2018 Iowa Acts ch. 1172, § 91. The amendment specified where the funds collected in the last four fiscal years of the assessment would be appropriated among the Iowa Energy Center, CGRER, and the general fund. In general, the 2018 amendment imposed a series of increasing appropriations to the general fund from the 85% otherwise allocated to the IEC. Neither the 2017 nor the 2018 amendments gave the Board the authority to change the manner in which it was implementing the statute.

13. In 2021, the Board submitted an invoice in April 2021, at a time that was a marked deviation from historical practice. The Board then submitted another invoice in May 2022. Because the assessment sunset in July, 2022, and because the board had already collected the full amount due from utilities under section 476.10A, there is no basis for the May 2022 assessment. As a result of the Board deviating from its long-standing practice, the May 2022

invoice was the fifth invoice issued in four fiscal years. The Board also failed to follow the legislative direction in the 2018 amendments, which allocated the final four fiscal years' worth of assessment proceeds and intended decreasing allocations to the IEC as allocations to the general fund increased. The Legislature did not authorize the Board to issue five full-year assessments in the final four fiscal years of the program. Because the Utilities pass on costs to the customer, this excess tax, which totals just under \$6.1 million, will ultimately be borne by utility customers.

14. The Utilities filed a formal protest with the Board. The matter was heard on June 23, 2022, and supplemental comments were filed. The Board's order issued on July 29, 2022, was legally erroneous in finding that its practice was authorized because it had not invoiced an assessment more than once in any calendar year. The Board's July 29, 2022 Order also violated the Board's own administrative rules in demanding payment within 10 calendar days.

Grounds for Review

15. Petitioners allege the following grounds for judicial review under Iowa Code § 17A.19(10):

b. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law.

c. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.

h. Action other than a rule that is inconsistent with the agency's prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency.

i. The product of reasoning that is so illogical as to render it wholly irrational.

j. The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action.

k. Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy.

n. Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. The Petitioners do not believe the Board is vested with discretion to interpret Iowa Code § 476.10A, but the following grounds for review are pled in the alternative, should the Court find the Board is vested with interpretive discretion:

l. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.

m. Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.

Prayer for Relief

16.The Petitioners pray this Honorable Court reverse the Board's order, find the May 2022 assessment was improperly invoiced as it was not authorized by Iowa Code § 476.10A and contrary to the Board's long-standing implementation of the statute, order the May 2022 invoice rescinded and any amounts paid by any utility refunded, and award any other relief appropriate under the circumstances.

17.The Petitioners further pray this Honorable Court set a briefing schedule for the presentation of briefs in this matter.

Respectfully submitted,

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